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C O N F I D E N T I A L SECTION 01 OF 03 KAMPALA 001708

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TAGS: [PGOV](#) [PHUM](#) [KDEM](#) [UG](#)
SUBJECT: UGANDA: GAVI SCANDAL TRIAL RESUMES

REF: A. KAMPALA 909

[1](#)B. KAMPALA 1199

Classified By: P/E Chief Kathleen FitzGibbon for reasons 1.4 (b) and (d).
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[1](#)1. (C) Summary: The trial of former Health Ministry officials and a State House mobilizer for the diversion of Global Alliance for Vaccines and Immunizations (GAVI) funds resumed on October 29. The Chief Magistrate overruled two defense team motions, causing the lawyers to walk out of court. The defense questioned the appointment of a prosecutor from the Directorate of Public Prosecutions and requested an opinion from the High Court regarding the jurisdiction of the Inspectorate of Government (IGG) to prosecute the case based on the charges made. The trial proceeded with the first government witness testifying that State House approved the use of the GAVI funds for mobilization campaigns on the requisitions presented. The next court date is November 6. Behind-the-scenes, the IGG continues to pursue former Health Minister Jim Muhwezi and was attempting to have him thrown out of Parliament based on alleged leadership code violations. End Summary.

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BACKGROUND
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[1](#)2. (U) The IGG's case against former Health Ministry officials Jim Muhwezi, Mike Mukula, and Alex Kamugisha and State House mobilizer Alice Kaboyo resumed on October 29. The defendants were accused of misdirecting USD 900,000 of a USD 4.3 million GAVI grant awarded for Uganda's surpassing immunization targets. The case had been in recess since July 19 when the Government said that it was not ready to proceed despite having arrested and charged the suspects in May (Ref A). At the time, State House officials told us that the IGG had not shared the results of her investigation with the Director of Public Prosecutions Richard Buteero, or the Criminal Investigation Division (CID) (Ref B). If the case had proceeded based on the IGG's investigation, the Government could have been embarrassed after making such highly-publicized arrests, according to lawyers unrelated to the case. In an attempt to salvage the case, Buteero provided a member of his staff, Michael Wamasebu, to prosecute the case for the IGG.

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BACK IN COURT
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[1](#)3. (U) The defense team immediately challenged Wamasebu's presence as the lead prosecutor because they claimed, only the IGG and her deputies, according to the IGG Act, could prosecute the case. Magistrate Margaret Tibulya (who allegedly is the IGG's cousin) overruled the defense, arguing that the IGG could delegate its powers and work together with

the DPP. The defense team then requested an opinion from the Constitutional Court on the official definition of corruption because of competing interpretations in the Prevention of Corruption Act (1995) and the Inspectorate of Government Act (2002). The defense lawyers argued that the IGG could only try cases of corruption and abuse of authority or public office, not theft, causing financial loss, embezzlement, obtaining money under false pretenses, and uttering false documents. Tibulya ruled that "there was nothing to refer to the Constitutional Court and for me to put off my hands, I would be abdicating my duty as a Chief Magistrate." She ordered the trial to proceed.

¶4. (U) The first witness, Gastavio Bwoch, Ministry of Finance's Accountant General testified that State House approved requisitions for GAVI funds. Muhwezi, Mukula, and Kamugisha then sent the requests to the Ministry's accounting officers. The defendants told the judge that they could not cross-examine the witness without their lawyers and refused to examine physical evidence. The case was adjourned to November 6.

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BACKDROP
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¶5. (C) Behind-the-scenes, State House continued to pressure Muhwezi's co-defendants to refund the GAVI funds and to testify against former Health Minister Jim Muhwezi. On September 24, Alice Kaboyo, the State House party mobilizer, told P/E Chief that she was under considerable pressure from President Museveni to testify against Muhwezi. She said that Museveni called her to State House for a two-hour meeting on September 22 and again offered to pay back the funds she "owed" if she would testify against Muhwezi. Kaboyo refused

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to recant her sworn testimony to the IGG that the State House had authorized her to use the funds to mobilize voters for the political campaigns in 2005 and 2006. Kaboyo remains upset at the President's personal betrayal, particularly ordering her arrest based on allegations from rival, Amelia Kyambadde, the President's Private Principal Secretary. Kaboyo said that she was in a precarious financial position and isolated from family members, such as First Lady Janet Museveni.

¶6. (C) Muhwezi told P/E Chief on October 14 that he was helping Alice withstand the pressure from State House. He claimed that Museveni could not understand Kaboyo's refusal to lie to implicate Muhwezi for financial gain. Mukula also said that State House had reached out to him, but he had already paid back funds (before his arrest) and claimed that he did not authorize expenditures, just moved the paperwork from State House to the accounting officers. Mukula believed that the President wrapped him up with Muhwezi hoping that he would turn against his former boss. Mukula has repeatedly told us that he wanted a speedy trial, which he believed would exonerate him. However, Mukula alleged on September 26 that Museveni intended on drawing out the case to keep Muhwezi in check while he (Museveni) worked out the details of a fourth term. (Note: Mukula is a member of the National Resistance Movement (NRM) executive, serving as the Chairman for the Eastern Region and is privy to the President's re-election plans. End Note.)

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IGG THREATENS ACTION OUTSIDE COURT CASE
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¶7. (U) The back-and-forth between the IGG and Muhwezi continued outside the courtroom. On August 18, the IGG ordered the current Permanent Secretary of the Ministry of Health, Mary Nannono, to demand repayment from Muhwezi of two sums of GAVI funds. Nannono sent the IGG's letter to Speaker of Parliament Edward Ssekandi, which requested him to suspend

Jim Muhwezi from Parliament and demand repayment of the alleged sums. Ssekandi, a lawyer, wrote back to the Permanent Secretary and the IGG advising on August 20 that "It is common knowledge that the above sums are a subject of a criminal case before a court of law. Don't you think that because of that state of affairs you cannot demand the payment from the accused person until the case is disposed of one or the other? Won't this payment now amount to an admission of the charges by the accused?" Nannono then sought legal advice from the Solicitor General, Lucian Tibaruha. He advised Nannono that because the case was in court, it would be prejudicial for the IGG to direct the Ministry of Health to demand repayment.

¶8. (U) Undeterred, Mwondha directed Ssekandi to inform Muhwezi on October 10 of the following: "that while you were the Minister of Health you failed to declare the GAVI reward of USD 4,361,000 to the Inspector General of Government as required by the Leadership Code Act (2002). (Note: The funds were deposited in the Ministry of Health accounts, not Muhwezi's personal accounts, and therefore not subject to declaration under the Leadership Code Act. End Note.)

¶9. (U) The IGG charged that Muhwezi failed to formally/officially notify President Museveni about the award from GAVI, in contravention of Article 117 of the Constitution. (Note: Muhwezi claims to have had two separate discussions with President Museveni and a letter confirming the award that was copied to the President. End Note.)

¶10. (U) The IGG said that Muhwezi failed to disclose receipts of the above money to the Minister responsible for Finance in breach of the Public Finance and Accountability Act (2003) and attendant regulations. (Note: Mwondha's accusation is inaccurate, according to an independent lawyer who has seen the documents, who asserted that it is the responsibility of the Permanent Secretary of the Ministry of Health to notify the Permanent Secretary of the Ministry of Finance. End Note.)

¶11. (U) The IGG said that Muhwezi arrogated the duties and powers of the Accounting Officer of the Ministry of Health by endorsing/approving the processing of requisitions for GAVI funds. Muhwezi, Mukula, and Kamugisha claim that they only passed on requests for funds that had been approved by State House for mobilization campaigns.

¶12. (U) Finally, the IGG informed Muhwezi through Speaker Ssekandi that he was "liable to refund 445,643,000 and 33,000,000 Ugandan shillings" or else he would be in breach of the Leadership Code Act. (Note: Kaboyo allegedly owed the 445,643,000 Uganda shillings and a former member of

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Parliament Tiperu Nusura Omar paid back the 33,000,000 Uganda shillings that Mwondha was demanding of Muhwezi. End Note.)

¶13. (U) The Speaker concluded his letter to Muhwezi with a disclaimer: "I have been guided that the IGG's directives must be implemented without question or further consultation outside of that office."

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COMMENT
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¶14. (C) The political struggle between President Museveni and former Health Minister Jim Muhwezi will continue to play out through the corruption scandal. Legal professionals and key government players are becoming increasingly concerned about the actions of the IGG, whose ham-handed tactics appear to disregard rule of law and due process guarantees.
CHRITTON